92-824

No. _____

Supreme Court, U.S.
FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

GREAT DANE TRAILERS, INC.

Petitioner,

versus

RONALD RUFFIN,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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October 1992

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ALABAMA
Southern Division
Civil Action No. CV 89-P-1951-S

RONALD RUFFIN,)
)
Plaintiff,)
)
-vs.-)
)
GREAT DANE TRAILERS, INC.)
)
Defendant.)

COMPLAINT

I. JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to the Act of Congress known as 28 U.S.C. Section 1331, 1343(4) and 28 U.S.C. Sections 2201 and 2202, 42 U.S.C. Section 2000e et seq. This is a suit in equity authorized and instituted pursuant to Title VII of the Act of Congress known as the "Civil Rights Act of 1964," as amended, 42 U.S.C. Section 2000e et seq, 42

U.S.C. Section 1981. The jurisdiction of this Court is invoked to secure protection of and redress deprivation of rights secured by 42 U.S.C. Section 2000e et seq. providing for injunctive and other relief against race discrimination and retaliation.

2. Plaintiff has fulfilled all conditions precedent to the institution of this action under Title VII of the Act of Congress known as the "Civil Rights Act of 1964," as amended, 42 U.S.C. Section 2000e et seq. Plaintiff timely filed his charge of race discrimination within 180 days of occurrence of the last discriminatory act. Plaintiff also timely filed his race claim within 90 days of the receipt of his right-to-sue letter from the E.E.O.C.

II. PARTIES

3. Plaintiff, Ronald Ruffin, is a citizen of the United States, and is a resident of the State of Alabama.

The plaintiff is employed by the defendant at its Birmingham location.

4. Defendant, Great Dane Trailers, is a corporate entity subject to suit under Title VII of the Act of Congress known as the "Civil Rights Act of 1964," as amended, 42 U.S.C. Section 2000e et seq. The defendant employs at least fifteen (15) persons.

III. CAUSES OF ACTION

5. The plaintiff re-alleges and incorporates by reference paragraphs 1-4 above with the same force and effect as if fully set out in specific detail hereinbelow.

6. The defendant discriminated on the basis of race against the plaintiff with respect to the promotions, wages, discipline, job assignments, and other terms, conditions, and privileges of employment.

7. The plaintiff was denied the opportunity to contract with the defendant for the position of Class A

mechanic. The plaintiff is rated a Class B mechanic, even though he has all the experience and knowledge as the white mechanics who have contracted with the defendant to be rated Class A.

8. The defendant assigns the best assignments of work to white employees. Whereas, the plaintiff is given the most difficult assignments of work even though plaintiff has more seniority that the white employees. For example, the plaintiff has not been allowed to drive even though he is qualified to do so.

9. The plaintiff is required to perform tasks in less time than white employees who have a helper in doing the same tasks.

10. The plaintiff is not disciplined in the same manner as the white employees.

11. The plaintiff has had to suffer racial slurs and derogatory actions from co-employees without any relief from supervision. The plaintiff has reported these

incidents to his supervisor without any corrective action being taken.

12. The plaintiff has no plain, adequate, or complete remedy at law to redress the wrongs alleged herein and this suit for back-pay, an injunctive and a declaratory judgment is his only means of securing adequate relief. The plaintiff is now suffering and will continue to suffer irreparable injury from the defendant's unlawful policies and practices as set forth herein unless enjoined by this Court.

IV. PRAYER FOR RELIEF

WHEREFORE, the plaintiff respectfully prays that this Court assume jurisdiction of this action and after trial:

1. Issue a declaratory judgment that the employment policies, practices, procedures, conditions and customs of the defendant are violative of the rights of the plaintiff as secured by Title VII of the Act of Congress

known as the "Civil Rights Act of 1964," as amended, 42 U.S.C. Section 2000e et seq.

2. Grant plaintiff a permanent injunction enjoining the defendant, its agents, successors, employees, attorneys and those acting in concert with the defendant and at the defendant's request from continuing to violate and Title VII of the Act of Congress known as the "Civil Rights Act of 1964," as amended, 42 U.S.C. Section 2000e et seq.

3. Enter an Order requiring the defendant to make the plaintiff whole by awarding him the position he would have had occupied in the absence of race discrimination, back-pay (plus interest), compensatory damages, lost seniority, benefits, and loss of pension.

The plaintiff further prays for such other relief and benefits as the cause of justice may require, including, but

not limited to, an award of costs, attorney's fees and expenses.

Respectfully submitted,

/s/
Melinda Lawrence Denham

OF COUNSEL:

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DEFENDANTS ADDRESS:

Great Dane Trailers
78 Bankhead Highway
Birmingham, Alabama

THE COURT: The Court will now dictate findings of fact and conclusions of law. These findings are based upon the evidence that's been presented during the trial of the case. The evidence consists of testimony of the various witnesses together with a number of exhibits that have been received into evidence.

This case has been brought by Ronald Ruffin against Great Dane Trailers, Incorporated, his employer. Mr. Ruffin, for the last thirteen years, has been employed as a mechanic by Great Dane. At the present time, his rate of pay is generally in the mid range of rates of pay that mechanics are being paid by Great Dane.

In this action under Title VII, Mr. Ruffin, a black male, asserts that he has been discriminated against because of his race by the defendant in essentially the four particulars. First, he says that he has been discriminated against because of his race in his pay and in particular in

his not being treated as a Class-A mechanic notwithstanding the fact that he has been employed for some thirteen years.

The second aspect is his claim that he has been given work assignments as a mechanic involving particularly dirty or difficult tasks and that his assignments of work have been affected by his race.

Third, he asserts that he has been subjected to disciplinary action both in terms of warnings and in terms of certain suspensions that were discriminatory against him because of his race.

And the fourth claim is that the work environment in and around the shop at Great Dane is racially offensive by reason of racial slurs, epithets, jokes and other incidents that make it offensive to a black person to work there.

The defendant noting that this charge giving rise to this case was filed with the EEOC in April 1988 has

asserted that the Court should not consider various matters that have occurred in the last year and a half that the plaintiff would say demonstrate unequal assignments, improper discipline or racially offensive matters. The defendant's position is that those should have been the subject of additional EEOC charges and ultimately additional cases or amendments to the complaint. I reject that contention by the defendant.

Where a charge involves claims of discriminatory treatment relating to the discipline and job assignments and the like and clearly is one that is claimed to be of a continuing nature subject to being repeated or manifested from time to time in different ways, it is clear to me that the initial charge vests the Court with jurisdiction to consider the additional incidents that are claimed to be simply new manifestations of the same complaint that are a part of the EEOC charge.

Accordingly, I do look in this case not only at those matters that may have occurred within 180 days prior to the filing of the charge in April of 1988 but, also, to those matters that have occurred since then that are closely related to and really a part of simply a claim of continuing repetitions of the matters contained in the charge.

I also consider evidence of matters that may have occurred long before 180 days prior to the filing of this action as perhaps circumstantial evidence that assists the Court in determining what went on during the period of time that is before the Court in terms of the charge and its 180 day period.

I now move into the recital of the facts as I find them to be under this evidence. I do note that counsel in their arguments have attempted to draw very fine lines between what is direct evidence and what is circumstantial evidence and what is McDonnell Douglas scutiny and what is scutiny under some other form of decision. I find those

arguments largely to be an exercise of intellectual curiosity more than helpful to the ultimate resolution of the case.

There is a dispute in this evidence as to whether or not Mr. Ruffin was assigned the more difficult jobs that mechanics were assigned. And there is a dispute in the testimony as to whether any such variation in job assignments might be attributed to Mr. Ruffin's race. While recognizing the difference in the evidence, the dispute in the evidence, I conclude on this issue favorable to the defendant. I conclude that the evidence has not shown that Mr. Ruffin was assigned jobs as a mechanic that were more difficult or more dirty than white mechanics were being assigned.

Much of the evidence has dwelt on particular assignments. It's clear that certain whites have been assigned the same jobs that Mr. Ruffin says were the worst. There are disputes as to whether assignments of whites to those jobs were of the same frequency that Mr.

Ruffin was assigned. At least as to one white employee, the evidence it seems to me is clear that that employee was assigned perhaps even a higher percentage or frequency of those "bad jobs" than was Mr. Ruffin. On that claim, then, I am ruling in favor of the company and against the plaintiff.

The second matter to be addressed relates to the claim of disparate treatment in the imposition of discipline both in terms of oral reprimands and indeed in terms of suspensions. As already indicated, I do not limit my attention to those matters that may have predated within 180 days the filing of the EEOC charge but I look to the variety of those matters as they have come up even to the date of the trial.

There is evidence that some of the matters for which Mr. Ruffin received either a warning or a suspension might, when compared with what some white employees have received in the way of reprimands or

suspensions, be considered as unequal and, hence, discriminatory--at least presumptively discriminatory.

The evidence also indicates on the other side that there are other matters for which Mr. Ruffin may have received only a reprimand or indeed be talked to but not recorded as even a reprimand for which white employees doing much of the same thing have been given even more severe punishments and discipline than has Mr. Ruffin. Indeed the evidence indicates that the company's dissatisfaction with Mr. Ruffin's performance and certain aspects of his work, particularly in slow production, has with respect to white employees or at least to two of those, resulted in their discharge, whereas at most, in Mr. Ruffin's case it has resulted in a suspension. I say the same thing with respect to certain violations of safety rules. I find in favor of the company on that claim as to the discipline. I find that Mr. Ruffin has not been

disciplined in a way disparate from whites as it relates to his race.

The more difficult issues before the Court are the last two. Those are ones dealing with pay and the consequential effect of pay raises that would have resulted in his classification as an A-mechanic rather than a B-mechanic, and the issues relating to the use within this workplace of racial slurs and jokes and incidents that certainly could be treated and viewed as offensive to black persons. These two matters are somewhat related as I will indicate in these findings.

The policy of this company is that pay increases to the mechanics, who generally number about fifteen at any particular time, are ordinarily handled by considering at roughly six month intervals the potential increase in hourly rates of individuals. On a few occasions, the company has granted the equivalent of a general increase to all employees by simply giving a one time payment in lieu of

individual hourly increases and has treated that one time payment as simply replacing any possible raises for that period of time, and as to those matters it appears that Mr. Ruffin has shared with the white mechanics in those payments.

As it relates, however, to the essentially semi-annual consideration of raises, it is clear that the company has made those decisions on an individual-by-individual basis, considering the mechanics, their work performance, their productivity, any problems with discipline and indeed their rates of pay in comparison with other mechanics given their apparent abilities, demonstrated particularly during the preceding six months. Typically, these raises to individuals have not exceeded twenty-five cents per hour and the persons to whom the raises have been given have not always received the full twenty-five cents per hour. The company has from time to time given smaller hourly increases.

There are four particular increases that the Court looks at particularly during this lawsuit. One is increases that were give in October or November of 1987. Mr. Ruffin did not receive any increase at that time in his hourly rate. There is next the increase that was given to some employees in March of 1988 approximately a month before the filing of Mr. Ruffin's charge. Mr. Ruffin did not receive any pay increase at that time. Two subsequent hourly increases were given mechanics. Mr. Ruffin did receive hourly increases during those latter two times, one in the amount of fifteen cents per hour and one in the amount of twenty cents per hour. These were not as high as some employees but they were not, at the same time, the lowest, as I recall.

The manner by which the company made the determinations about pay increases was that the branch manager of the defendant, in conjunction with the service manager, would review the status of the mechanic. One

of the things that would be considered in that connection would be certain ratings or what was referred to here as "flex" or "flexibility charts" that had been prepared with respect to each of the mechanics by the service manager or the shop foreman and the two lead men. These appraisals averaged, would attempt to assess, particularly within the preceding six months how the various mechanics were doing in terms of various job skills, particular types of welding, particular functions that people had to perform in grading the individuals with respect to whether they were untrainable subject to being trained, good or satisfactory or indeed skilled. In addition to those attributes, attempted to be rated in this manner, there would be an assessment of a person's attitude during the preceding six months and attendance record during the preceding six months.

These flex charts would be considered by the two individuals making the decision about pay raises. They

were not the only thing to be considered and indeed as the Court attempted to compare those flex ratings with what happened in the way of actual granting of raises, it's apparent that the flex ratings certainly have no high correlation to the actual raises given but at most had some influence on those.

The branch manager and service manager in making these semi-annual decisions on raises would also consider their views of the various employee's productivity, safety matters, disciplinary record during the preceding six months' period of time and how the person's pay compared with other employees, particularly those who were reflecting the same level of skill.

Obviously a system like this creates a substantial opportunity for persons with racial biases to let those biases be reflected in the increases being given. There is no evidence to indicate that either of the two individuals involved in making those decisions, either Mr. Aycock, the

branch manager, or Mr. Woods, the service manager, were themselves infected with any kind of racial bias that would perhaps affect their decisions on pay raises.

However, one of the elements or items being considered by them were these flex charts and one of the four individuals involved in preparing the flex charts was a lead man, Mr. Webb, about whom there is evidence to certainly indicate a likelihood of racial bias or prejudice.

There is some evidence to indicate that a second of the people involved in making those flex charts ratings, Mr. Willoughby, who was a shop foreman, had or may have had racial bias. I reject the plaintiff's evidence as to evidence of Mr. Willoughby's racial bias and do not find the evidence to support any such determination or conclusion.

It does leave me with the point that one of the four individuals involved in making the flex ratings was at least potentially subject to racial bias and prejudices that could

have affected those ratings. Indeed as I've looked through the flex ratings and with particular emphasis to those given by Mr. Webb, at least I believe it's the latter two as to which I had the information, indicate an unusually low rating of Mr. Ruffin by Mr. Webb.

At the same time, the ratings give to Mr. Ruffin by the other three, as to whom I find no racial bias, also indicate a lower rating for Mr. Ruffin than might otherwise have been suspected in the light of his experience of, at that time, ten to eleven years. The evidence indicates that during this period of time, Mr. Ruffin was having, periodically, difficulties in production, in being slow in getting work out. This is not to say that all mechanics do not, from time to time, have jobs assigned to them where they take more time than the goal in terms of hours that were prescribed at the time the job was taken on or assigned.

The evidence indicates a repeated problem, however, with Mr. Ruffin beyond simply the one or two incidents of his having exceeded a goal as set at the time of a job assignment. The records of the service manager reflecting the admonitions to Mr. Ruffin concerning his lack of productivity, not attending to the work, at times not being prompt in reporting to the job to begin promptly to work, reflect, as the company has here described it, a roller coaster effect in Mr. Ruffin's job performance. Namely the company's position is that, although Mr. Ruffin has the various skills to be able to do this work and can do it, he frequently has not done it.

The evidence reflects problems with Mr. Ruffin's attendance. Here again, this is not to say that other employees and white employees have not had attendance problems as well. One of the interesting things about this case is that the company has been able to demonstrate that it has taken more severe disciplinary action with

respect to certain white individuals than it has with Mr. Ruffin as it relates to essentially the same problems.

I put aside for the moment this discussion about pay. I do note, however, that the two times in which Mr. Ruffin did not receive a pay increase, the fall of 1987 and the spring of 1988 occasions, although he did not receive a pay increase neither did most white employees. The evidence indicates that the fall of 1987 pay increase, there were pay increases given to only three of the fifteen mechanics. The evidence indicates that in the spring 1988 pay increases, there were increases given to only two of the fifteen mechanics. So that the failure in this respect of Mr. Ruffin to receive an increase has to also be considered in light of the fact that most white employees did not receive an increase either. I leave this matter for the moment to discuss the work environment.

The evidence indicates that in the shop, the various mechanics, most of whom were white, engaged on a

regular basis in making racially tainted jokes, slurs and epithets. They at times would refer to Mr. Ruffin and other black employees in a derogatory and offensive way. There were matters of horseplay that went on. Not all blacks necessarily were offended by those but at least Mr. Ruffin was and there certainly was a basis for his being offended by those.

Mr. Ruffin also took offense at his being referred to on a fairly regular basis as "Rondo". There is nothing in that term that has a racial connotation to it. It apparently was used in light of Mr. Ruffin's name being Ron or Ronald and in light of the fact that the service manager's name also was Ron or Ronnie, and somehow the coin of the nickname of "Rondo" to refer to Mr. Ruffin, at least that would appear to have been perhaps the initial foundation for it. At the same time, at least at some point, Mr. Ruffin no longer liked being referred to as Rondo, didn't understand the term perhaps,

and made an inquiry about it and was told it meant "dumb ass". Well, even so, though it may have been offensive, that has no racial connotations to it, unless one also assumes that a person making that comment is saying that black people more than white people could be dumb asses. There's nothing to suggest that.

At the same time, certainly the Court must be sensitive to the fact that given the historical basis of black people frequently being referred to either by first names when others were not or by being called "boy" when others were not called in that way, that there is more reason for a black person to be offended by the use of a nickname than perhaps a white person might under similar circumstances. Mr. Ruffin did make it known that the didn't like being called "Rondo". As it relates to that particular matter, the company made no effort to see that the co-workers, the mechanics, ceased using a term that

Mr. Ruffin didn't like although it, in and of itself, has no racial overtones.

There is an incident that occurred in or around the close of the year 1987 certainly as to which this Court would be concerned and is concerned. An incident in which a noose was prepared using heavy rope by white mechanics and ultimately the noose was put around Mr. Ruffin's neck by one of these white mechanics. These are co-workers and not supervisors.

Mr. Ruffin made a complaint to management about what had occurred and management did immediately make an inquiry investigation into it. Management got conflicting stories with the whites who were involved having indicated that, number one, it had not originally been prepared in any way as something directed to Mr. Ruffin and that in any event it was a matter simply of a joke and no offense taken in the eyes of the whites and that Mr. Ruffin, himself, had engaged in some horseplay

or joking use of the noose at the same time. Mr. Ruffin's version, of course, was different as to what happened and it has been different in this trial.

Management, confronted with the two different stories, without making a decision as to which story or which version to believe, said that certainly an apology was due to Mr. Ruffin from the whites who were involved and indeed that apology was given. So far as management was aware, that had satisfied Mr. Ruffin. Obviously it did not satisfy him, but at least in terms of responding later to management, he did not indicate that he was still unhappy with what had occurred or what action management had taken or failed to take of a more severe nature.

Since that incident in late 1987 it's clear to the Court that management has taken a more active role in reducing the amount of offensive language and joking that had been going on prior to that time. It's also clear that the action that management has taken from time to time

in terms of correcting individuals who might be involved in using racial slurs or names or jokes has not totally stopped that kind of activity from going on within the workplaces among co-workers.

Management has taken disciplinary action since that time with respect to individuals, where it was reported to management, that these things had occurred. It is not unexpected that these matters have gone on periodically and have not been reported to management persons.

It is very difficult, obviously, for management to directly address matters when it's not reported, where they have no knowledge of it, and it is clear to the Court based on the evidence presented that management does view that as inappropriate behavior and is prepared to impose appropriate discipline when called to its attention.

I digressed to this area because one of the aspects that is most difficult for the Court to deal with here is that a determination as to whether this racially hostile

environment that would periodically be there when Mr. Ruffin was working contributed to or caused the inadequacies in performance which in turn have resulted in the failure to get pay increases. To the extent the work environment is sufficiently hostile so that an individual is adversely affected in job performance by his response to it and that's a reasonable response, not an unduly sensitive response, then, as I view it, that becomes an act of discrimination that can carry over into decisions that flow from it, for example, in the decision about pay increases.

So, that is where the Court's struggle is in this particular case. I've heard, of course, from other black employees or former employees and the mere fact that some of them may take greater offense or lesser offense at these same activities is not controlling on the Court but it is helpful in trying to assess the extent to which these matters that were going on among co-workers constituted such a pervasive environment that it could reasonably be

expected to have caused inadequate job performance which, in turn, could flow over into the area of pay increases.

I do conclude that there were sporadic instances of slurs, jokes, going on during the critical time period that we're looking at from late 1987 forward. I do conclude that that constituted a violation of the plaintiff's rights under Title VII and that although the company was not aware of all of those matters, it did become aware of enough of them that some affirmative and effective corrective action was appropriate and was required of the company. It has taken some action. But during that period of time Mr. Ruffin was exposed to those matters and having to work under those conditions, the question is how substantial and severe were they and to what degree as it relates to Mr. Ruffin did that actually cause the problems he was having which led to his poor or relatively poor job performance? My conclusion is that

though Mr. Ruffin was justifiably and understandably upset and offended from time to time by the work of some of these co-workers, that was not the basis or reason for the inadequacies in job performance that led to his not having received the pay increases in the fall of '87 or the spring of '88.

I go back and I note that only three of approximately fifteen mechanics got pay raises in the fall of '87, only two of fifteen got pay raises in the spring of '88. Their "inadequacies of performance" that were essentially similar to those, in many respects, of Mr. Ruffin, were not for them in any way the result of racially offensive environment. And from hearing from other black employees in trying to assess as best I can what was the real impact in the ability to perform work, I don't believe that the offensive conduct that was going on among co-workers was the cause of the inadequacies of job performance that Mr. Ruffin was experiencing at that

time. I am going to reject Mr. Ruffin's claim that lack of pay increases with the consequent lack of promotion from B-mechanic to A was racially motivated or came from or is attributed to anything racially.

I have found and do find that the company did not provide a sufficiently racially neutral environment for Mr. Ruffin and other blacks to perform their work in, that I declare, as a declaratory judgment, that Mr. Ruffin's rights were violated back during that period of time. The company has taken some action since late 1987 to correct that and it's certainly made it clear to the co-employees that it does not tolerate that and does not view that type of conduct as permissible. It's also true that given the extent to which that had been going on for such a number of years, that it has been ineffective in really correcting adequately that situation.

I am going to enjoin the company to take active steps to reduce and eliminate the racial joking and slurs

and episodes in the shop area. The wording of an injunction of this sort is very difficult. And it is, as I say, clear to me that the company has attempted or started in that area, has undertaken from time to time disciplinary action. But I think the Court is essentially requiring now, given this evidence, the company to be more affirmative and more aggressive in its efforts to correct that situation, that environment in the shop. Only in that respect is the Court granting relief to the plaintiff. While important, it is not really a central aspect of what has been the claim presented by the plaintiff.

The plaintiff, I'm sure must feel like he has lost in the case. I think it is fair to say in general he has lost in this case even though the Court does find on this area an entitlement to relief.

In my view, each side--or the costs should be taxed against the defendant but in my view the plaintiff is not entitled to attorney's fees in this case having won on no

central or major or significant issue being presented. The result, then, is a decision that will enjoin the company to take affirmative action to prevent the existence of conditions within the shop that are racially offensive.

The costs of the action will be taxed against the company but those costs will not include attorney's fees. I'm sure that neither side agrees with the Court's conclusions or findings. And there are some areas that I have not touched on. The matters are still clear in my mind and if counsel believe I have failed to cover a subject matter that I should have covered and perhaps could do so while the evidence still is clear in mind, I would appreciate your advice on something that I've overlooked. If you think I made a misstatement that perhaps I would want to correct, I would also like to be told that. Again, I'm not asking for any waiver of the right for post judgment motions. Does plaintiff know of anything that perhaps I should deal with?

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Southern Division
Case No. CV 89-P-1951-S

RONALD RUFFIN,)
)
Plaintiff;)
)
-vs.-)
)
GREAT DANE TRAILERS, INC.,)
)
Defendant.)

JUDGMENT

Pursuant to the findings of fact and conclusions of law dictated into the record, it is hereby ORDERED that defendant, Great Dane Trailers, Inc., be hereby enjoined to take appropriate steps to create a work environment at its shop in Birmingham, Alabama, that will not be racially offensive to its black employees, and more particularly that the defendant, Great Dane Trailers, Inc., take appropriate steps to assure that its employees at such job site cease using racial slurs, epithets, slang, and jokes that

might be reasonably expected to be offensive to its black employees. In other respects, the claims of the plaintiff are DENIED.

Costs, but not including attorneys' fees, are taxed against the defendant.

This the 19th day of April, 1991.

/s/ Sam C. Pointer
United States District Judge

Ronald RUFFIN, Plaintiff-Appellant,

v.

GREAT DANE TRAILERS,
Defendant-Appellee.

No. 91-7423.

United States Court of Appeals,
Eleventh Circuit.

Aug. 20, 1992.

Appeal from the United States District Court for the Northern District of Alabama.

Before KRAVITCH, Circuit Judge, CLARK*, Senior Circuit Judge, and PITTMAN**, Senior District Judge.

KRAVITCH, Circuit Judge:

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* See Rule 34-2(b), Rules of the U.S. Court of Appeals for the Eleventh Circuit.

** Honorable Virgil Pittman, Senior U.S. District Judge for the Southern District of Alabama, sitting by designation.

Plaintiff-appellant Ronald Ruffin appeals the district court's denial of plaintiff's request for attorney's fees. Ruffin sued his employer, defendant-appellee Great Dane Trailers ("Great Dane"), seeking damages and injunctive relief for violations of Title VII. The district court found in favor of the defendant on plaintiff's claims for damages, but held in favor of the plaintiff on his claim for injunctive relief, ordering the defendant to take appropriate steps to make its Birmingham, Alabama shop a racially neutral workplace. The district court denied plaintiff's request for attorney's fees on the ground that he had failed to prevail on any significant issue in the litigation. Plaintiff appeals the district court's decision not to award plaintiff attorney's fees. We reverse and remand to the district court.

I. BACKGROUND AND COURSE OF PROCEEDINGS

Ruffin was employed at Great Dane's Birmingham, Alabama shop as a Class B mechanic. On November 15, 1989, Ruffin sued Great Dane for violations of Title VII, claiming discrimination on account of race. Specifically, Ruffin alleged the following violations: (1) that Great Dane had failed to promote Ruffin to the position of Class A mechanic on account of race; (2) that Great Dane had discriminated against Ruffin in terms of job assignments, giving him more difficult and less attractive work than white mechanics received; (3) that Great Dane had disciplined Ruffin differently than it disciplined white workers; and (4) that Ruffin had been subjected to a racially hostile work environment.

Ruffin sought the following relief: (1) a declaratory judgment that Great Dane's employment policies and practices violated Title VII; (2) a permanent injunction

ordering Great Dane to cease violating Title VII; and (3) "an Order requiring the defendant to make the plaintiff whole by awarding him the position he would have occupied in the absence of race discrimination, compensatory damages, lost seniority, benefits, and loss of pension."

This case was tried before the United States District Court for the Northern District of Alabama on April 15-16, 1991. At the end of the trial, the court read its findings of fact and conclusions of law into the record, analyzing separately each of the four components of Ruffin's Title VII claim.

The court ruled in favor of the defendant on the first three components of Ruffin's claim. The court held that Ruffin's work performance justified both the failure of the company to promote him to a Class A mechanic and the disciplinary measures taken by the company against Ruffin. The district court also found to be without

merit Ruffin's allegations that he was treated unfairly in terms of work assignments.

With respect to Ruffin's claim of a racially hostile work environment, the court made two determinations. First, the court rejected plaintiff's contention that Great Dane's allegedly racially offensive work environment adversely affected Ruffin's work performance and had therefore caused the above-mentioned deficiencies in Ruffin's performance that resulted in his failure to gain advancement in the company. Second, however, the court found that "the company did not provide a sufficiently racially neutral environment for Mr. Ruffin and other blacks to perform their work in." The court found that "in the shop the various mechanics, most of whom were white, engaged on a regular basis in making racially tainted jokes, slurs and epithets." In making this determination, the court pointed in particular to one 1987 incident, highlighted by the plaintiff at trial, in which Ruffin's co-

workers had placed around his neck a hangman's noose made out of thick rope and had stated that they intended to "hang us a nigger." The court recognized that Great Dane had taken some action since 1987 to correct such problems, but also recognized that "given the extent to which [the offensive behavior] had been going on for such a number of years, . . . [Great Dane] has been ineffective in really correcting adequately the situation."

The court therefore (1) issued a declaratory judgment that Ruffin's rights had been violated by virtue of the behavior at the Great Dane shop, and (2) issued an injunction requiring Great Dane to "take active steps to reduce and eliminate the racial joking and slurs and episodes in the shop area." In explaining its injunction, the court noted that it was "essentially requiring . . . the company to be more affirmative and more aggressive in its efforts to correct that situation, that environment in the shop."

The court taxed costs against the defendant, but held that the plaintiff was not entitled to attorney's fees under 42 U.S.C. § 1988, the civil rights attorney's fees statute, because he had not prevailed on any "central or major or significant issue." In its earlier discussion of the injunction issue, the court had indicated that "[w]hile [the district court's ruling on the injunction issue is] important, it is not really a central aspect of what has been the claim presented by the plaintiff."

Ruffin appeals the district court's determination that he is not entitled to attorney's fees under 42 U.S.C. § 1988.

II. STANDARD OF REVIEW

[1] We review a district court's determination that a civil rights plaintiff is not entitled to attorney's fees for abuse of discretion. Hensley v. Eckerhart, 461 U.S. 424, 437, 103 S.Ct. 1933, 1941, 76 L.Ed.2d 40 (1983);

Taylor v. City of Fort Lauderdale, 810 F.2d 1551, 1556 (11th Cir. 1987).

III. ANALYSIS

A. The "Prevailing Party" Standard

42 U.S.C. § 1988 states, in relevant part: "In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." Thus, the question in this case is whether Ruffin was a prevailing party under 42 U.S.C. § 1988.

[2] The parties agree that the Supreme Court's decision in Texas State Teacher's Ass'n v. Garland Independent School District, 489 U.S. 782, 109 S.Ct. 1486, 103 L.Ed.2d 866 (1989), is controlling on the "prevailing

party" issue. In Garland, the Court resolved a conflict between the circuits as to the proper standard for determining whether a civil rights plaintiff was a prevailing party, rejecting the Fifth and Eleventh Circuits' "central issue" test in favor of a more lenient standard.[1] The Garland Court held that "[i]f a civil rights plaintiff has succeeded on 'any significant issue in litigation which achieve[d] some of the benefit the parties sought in bringing suit,' the plaintiff has crossed the threshold to a fee award of some kind." Garland, 489 U.S. at 791-92, 109 S.Ct. at 1493 (quoting Nadeau v. Helgemoe, 581 F.2d 275, 278-79 (1st Cir. 1978).) The Court further held:

> [w]here the plaintiff's success on a legal claim can be characterized as purely

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[1]Prior to Garland, the Fifth and Eleventh circuits had required a civil rights plaintiff to succeed on the "central issue" in the litigation and achieve the "primary relief sought" to be eligible for an award of attorney's fees under 42 U.S.C. § 1988. Simien v. San Antonio, 809 F.2d 255, 258 (5th Cir. 1987); Martin v. Heckler, 773 F.2d 1145, 1149 (11th Cir. 1985) (en banc).

> technical or de minimis, a district court would be justified in concluding that even the "generous formulation" we adopt today has not been satisfied. [Citations omitted]. The touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute. Where such a change has occurred, the degree of the plaintiff's overall success goes to the reasonableness of the award under Hensley [v. Eckerhart, supra], not to the availability of a fee award vel non.

Id. at 792-93, 109 S.Ct. at 1493.

Appellant claims that because the district court's injunction materially altered the legal relationship between himself and Great Dane, he has satisfied the Garland test and has prevailed on a significant issue in the litigation that achieved some of the benefits he sought in bringing suit.[2] Appellee contends, conversely, that Ruffin did not

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[2]Specifically, Ruffin argues that the district court erred by applying the "central issue" test rejected in Garland. The court did state that plaintiff "won on no central or major or significant issue being presented," and that (continued...)

satisfy the Garland standard for several reasons: first, appellee notes that Ruffin received none of the financial benefits he sought from bringing his lawsuit, such as a promotion or back pay; second, appellee argues that the court did not order Great Dane to initiate any further action with respect to the specific incidents of racial harassment out of which Ruffin's lawsuit arose; third, Great Dane contends that, given the district court's finding that Great Dane had take some steps to eliminate the offensive racial atmosphere in its Birmingham shop, the court's injunction merely directed the appellee to "do

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[2](...continued)
Ruffin's claim for injunctive relief "[was] not really a central aspect of plaintiff's claim," thereby arguably implicating the discredited "central issue" test. We believe, however, that the court's language, taken as a whole, reveals that the district court looked to see whether the plaintiff prevailed on any significant issue in the litigation, thereby applying the correct legal standard. The question remains, however, whether the court incorrectly applied that standard, and abused it discretion by concluding that Ruffin was not entitled to attorney's fees.

more of what the evidence established [it] had already done in the past." Ultimately, argues Great Dane, Ruffin achieved no more than a "technical victory" in district court, and lost on "every significant claim presented to the court."

We disagree with the appellee, and hold that the district court abused its discretion in determining that Ruffin was not a prevailing party under 42 U.S.C. § 1988 and Garland, supra.

B. The Right

[3, 4] The district court's findings/conclusions make clear that the defendant violated the plaintiff's civil rights by not providing a sufficiently racially neutral work environment for Ruffin and other blacks at Great Dane, and by failing to take "some affirmative and effective corrective action" in light of the racially offensive environment at the Great Dane shop. Although it is true

that a mere determination that a civil rights plaintiff's rights have been violated does not per se make the plaintiff a prevailing party for purposes of 42 U.S.C. § 1988, see Rhodes v. Stewart, 488 U.S. 1, 4, 109 S.Ct. 202, 203, 102 L.Ed.2d. 1 (1988); Hewitt v. Helms, 482 U.S. 755, 762, 107 S.Ct. 2672, 2676, 96 L.Ed.2d 654 (1987); Walker v. Anderson Electrical Connectors, 944 F.2d 841, 846-47 (11th Cir. 1991), pet. for cert. filed, 60 U.S.L.W. 3862 (May 8, 1992), the district court's ruling in this case provided Ruffin with more than a bare declaration that his rights had been violated.

C. The Remedy

[5] In an attempt to preclude future violations of Ruffin's rights, the court in this case fashioned affirmative injunctive relief, mandating that Great Dane take affirmative steps to improve its response to worksite racism. The court's decision to issue the injunction arose

out of its recognition that although Great Dane had since 1987 taken some corrective action to redress the racism suffered by Ruffin, "the action management has taken from time to time in terms of correcting individuals who might be involved in using racial slurs or names or jokes has not totally stopped that kind of activity from going on within the workplaces among co-workers." Thus, because of what it perceived to be a less-than-full commitment on the part of Great Dane to eradicate the racial taunts and comments that permeated the appellee's shop, the court saw fit to use its injunctive powers to require Great Dane to be more aggressive in providing black workers with a racially neutral work environment. Ruffin clearly sought such injunctive relief in his complaint.

The district court's judgment undoubtedly affected the behavior of Great Dane toward the defendant, and altered the legal relationship between Ruffin and his employer. By virtue of the court's grant of injunctive

relief, Great Dane is now under a legal obligation to correct the racist behavior at its jobsite. Accordingly, Ruffin may now protect his rights through a civil contempt proceeding in the event that Great Dane's compliance with the court's injunction is not forthcoming. See Mercer v. Mitchell, 908 F.2d 763, 768 (11th Cir. 1990). Given the alteration of Ruffin's legal rights and Great Dane's legal obligations that resulted from the court's grant of injunctive relief, there is no question that Ruffin prevailed on this issue before the district court, or that, consequently, he satisfied the Garland standard and is entitled to an award of attorney's fees.

D. The Incompleteness of the Remedy

[6] That Ruffin only partially prevailed in his suit against Great Dane in no way precludes him from receiving attorney's fees in this case. Indeed, the very import of Garland is that a plaintiff need only prevail on

one significant issue to qualify as a prevailing party under 42 U.S.C. § 1988. Garland, 489 U.S. at 789, 109 S.Ct. at 1492. A plaintiff may be said to have prevailed if the relief granted altered his or her legal relationship with the defendant. Our discussion in Section II.C, supra, reveals that the relief afforded Ruffin materially altered his relationship with Great Dane. Thus, the fact that Ruffin obtained relief on no other issue is irrelevant.[3]

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[3]Both parties analogize this case to one in which the plaintiff received nominal damages and nothing else out of his or her civil rights action. Several circuits, including this one, have held that an award of nominal damages, without more, suffices as a basis for an award of attorney's fees under 42 U.S.C. § 1988. Garner v. Wal-Mart Stores, Inc., 807 F.2d 1536, 1539-40 (11th Cir. 1987); Scofield v. City of Hillsborough, 862 F.2d 759, 766 (9th Cir. 1988); Ruggiero v. Krzeminski, 928 F.2d 558, 564 (2d Cir. 1991); Allen v. Higgins, 902 F.2d 682, 684 (8th Cir. 1990). The Fifth Circuit, however, has held that an award of nominal damages, without more, represents the kind of technical, de minimis victory that the Supreme Court in Garland, Hewitt and Rhodes held should not furnish a basis for attorney's fees. Estate of Farrar v. Cain, 941 F.2d 1311, 1313-17 (5th Cir. 1991). The Supreme Court recently granted certiorari in Farrar, ___ U.S. ___, 112 S.Ct.

(continued...)

E. The Prospective Nature of the Remedy

[7] Appellee further argues that because the court did not order Great Dane to initiate any further action with respect to the specific incidents of racial harassment out of which Ruffin's lawsuit arose, such as the 1987 noose incident, the plaintiff was not the prevailing party for purposes of 42 U.S.C. § 1988. This argument implies that the prospective nature of the relief obtained by the plaintiff makes such relief an inadequate predicate for the award of attorney's fees, and, in essence, suggests that as a general matter injunctive relief, which is by its

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[3](...continued)
1159, 117 L.Ed.2d 407 (1992), and will presumably resolve this issue in the near future. In any event, this case is different in kind from cases involving nominal damages insofar as the district court's action in this case materially altered the legal relationship between Ruffin and Great Dane in a way that an award of nominal damages does not. See Section II.C, supra. Therefore, regardless of whether or not the Supreme Court ultimately holds nominal damages to provide a sufficient predicate for an attorney's fees award under 42 U.S.C. § 1988, the district court erred in denying Ruffin attorney's fees in this case.

very nature prospective, could not provide an adequate basis for an attorney's fees award under 42 U.S.C. § 1988.

Appellee's contention, of course, is patently wrong. In Crowder v. Housing Authority of the City of Atlanta, 908 F.2d 843 (11th Cir. 1990), for example, this court approved an award of attorney's fees to a group of senior citizens who had successfully sought an injunction that would allow them to hold Bible study meetings and to post notices of such meetings in their public housing complex. The court issued the requested injunction, which "put into place specific detailed procedures that guaranteed the plaintiffs access to meeting space and bulletin board access." Crowder, 908 F.2d at 849.

[8] Although the relief in this case does not reach the level of specificity reached by the injunction issued in Crowder, in both cases the court used its injunctive powers to address situations which had previously resulted in violations of the plaintiffs' rights,

and to mandate the implementation of procedures that would ensure against the recurrence of such violations. The fact that, as in Crowder, specific instances of misconduct by the defendants were not addressed by the court's injunction is of no moment.[4] Where, as here, injunctive relief is requested by a plaintiff and granted by the district court, the accompanying failure of the court to provide retrospective relief in the form of compensatory damages does not negate the court's use of its authority to mandate Great Dane's increased attention and improved responses to jobsite racism, and to provide Ruffin with a remedy in the event increased vigilance is not forthcoming. See also, Sanchez v. City of Miami Beach, 720 F.Supp. 974 (S.D.Fla. 1989) (Title VII plaintiff entitled to attorney's

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[4]It should be noted that the plaintiffs in Crowder, like Ruffin, unsuccessfully sought monetary damages for the defendant's violation of their rights.

fees after having been granted injunctive relief on her claims of sexual harassment).

F. The Need For a Remedy

Finally, appellee suggests that because the district court found that Great Dane had taken some corrective action to improve the racial situation at Ruffin's jobsite, the court's injunction does not materially alter the existing legal relations between Ruffin and Great Dane, and therefore cannot serve as the basis for an award of attorney's fees. This argument is also without merit.

[9] An injunction is inappropriate if the possibility of future harm to the plaintiff arising out of the behavior plaintiff seeks to enjoin is purely speculative. Lopez v. Garriga, 917 F.2d 63, 67 (1st Cir. 1990). The district court saw fit to issue an injunction against Great Dane because Great Dane had failed to correct adequately the situation which led to violations of Ruffin's

rights. The court's decision to issue its injunction reflected its belief that the possibility of future violations of plaintiff's rights--and the rights of other blacks employed by Great Dane--existed, and served to ensure the lack of recurring violations.

Appellee does not challenge the award of injunctive relief, nor does it suggest that the court's finding that Great Dane has failed to address adequately the problem of jobsite racism is clearly erroneous. Given the district court's unchallenged findings, we cannot hold that the court's injunction did not materially alter the relationship between Ruffin and Great Dane because Great Dane had already acted to effectuate this changing relationship. To do so would strip the district court's action of any meaning whatsoever, and would negate the court's determination that Great Dane had not adequately corrected the situation that resulted in a violation of Ruffin's rights.

IV. CONCLUSION

For the foregoing reasons, we conclude that the district court abused its discretion in determining that Ruffin was not a prevailing party under 42 U.S.C. § 1988. Accordingly, we REVERSE and REMAND this case to the district court with instructions to hold an evidentiary hearing on plaintiffs' entitlement to attorney's fees.

STATUTORY PROVISIONS

42 U.S.C. §2000e-2. Unlawful employment practices

[Sec. 703](a) It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national original; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such

individual's race, color, religion, sex, or national origin. . .

42 U.S.C. § 2000e-5(k). Enforcement provisions

In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

42 U.S.C. §1988. Proceedings in vindication of civil rights; attorney's fees

. . . In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 U.S.C. §§ 1981-83, 1985, 1986], title IX of

Public Law 92-318 [20 U.S.C. §§ 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 U.S.C. §§2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.